



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

FEB 24 2012

Emmett Cash III

Inglewood, California 90305

RE: MUR 5951
Californians for Change f/k/a
Californians for Obama
Emmett Cash III

Dear Mr. Cash:

On February 16, 2012, the Federal Election Commission accepted the signed conciliation agreement you submitted on December 7, 2011, in settlement of various violations of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1620.

Sincerely,

Jack Gould
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 5951

Californians for Change f/k/a Californians)
for Obama and its treasurer)

Emmett Cash, III)

2011 DEC -7 AM 11:10
OFFICE OF THE CLERK
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Ercell Hoffman.

An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that Emmett Cash, III violated 2 U.S.C. § 441h(b), and Californians for Change f/k/a Californians for Obama and its treasurer ("the Committee") (together "Respondents") violated 2 U.S.C. §§ 441h(b), 441d(a), and 432(e)(4).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts and law in this matter are as follows:

1. Californians for Change is a political committee within the meaning of 2 U.S.C.

§ 431(4).

2. Emmett Cash III was one of the founders of Californians for Change and its predecessor, Californians for Obama. According to Mr. Cash, Californians for Obama was formed as a Draft Committee. Californians for Obama conducted

1 much of its activity after then-Senator Obama became a candidate for President of
2 the United States.

3 3. Kinde Durkee was the Committee's treasurer at the time of the activity in this
4 matter.

5 4. Kinde Durkee filed an amended Statement of Organization with the Commission
6 on January 30, 2009, naming Mr. Cash as treasurer. Mr. Cash contends that
7 Kinde Durkee filed the amended Statement of Organization without his
8 knowledge or consent.

9 5. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits
10 the use of a candidate's name in the name of an unauthorized committee.
11 2 U.S.C. § 432(e)(4).

12 6. The Act requires political committee public communications to contain
13 disclaimers. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). The disclaimer
14 requirements apply to all internet websites of political committees. See 11 C.F.R.
15 § 110.11(a)(1). The disclaimer requirements also apply to any communication by
16 mass mailing or telephone bank. See *id.*; 11 C.F.R. § 100.26. A mass mailing and
17 a telephone bank means more than 500 pieces of mail and more than 500 calls,
18 respectively, of an identical or substantially similar nature within a 30-day period.
19 11 C.F.R. §§ 100.27 and 100.28. The communication, if not authorized by a
20 candidate, must clearly state the name and permanent street address, telephone
21 number, or World Wide Web address of the person who paid for the
22 communication and state that the communication is not authorized by any
23 candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R.
24 § 110.11(b)(3).

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1 7. The Act states that no person shall: (1) fraudulently misrepresent the person as
2 speaking, writing, or otherwise acting for or on behalf of any candidate or
3 political party or employee or agent thereof for the purpose of soliciting
4 contributions or donations; or (2) willfully and knowingly participate in or
5 conspire to participate in any plan, scheme or design to violate paragraph (1).

6 2 U.S.C. § 441h(b).

7 8. The Committee filed a Statement of Organization with the Commission on
8 December 12, 2006, as Californians for Obama and conducted activities and
9 fundraising under this name. On August 9, 2007, the Committee filed an
10 amended Statement of Organization changing its name from Californians for
11 Obama to Californians for Change.

12 9. Mr. Cash was in charge of the Committee's strategy and acted on its behalf
13 almost entirely by himself.

14 10. Respondents acknowledge that the Committee maintained a website that
15 contained no disclaimer other than on the "Contribute" page, where the partial
16 disclaimer failed to state whether the website was authorized by a candidate and
17 who paid for the website. In addition, telemarketing calls conducted on behalf of
18 the Committee and mass mailings conducted by the Committee did not contain
19 proper disclaimers.

20 11. The Committee received contributions totaling approximately \$16,000 as a result
21 of a telemarketing campaign, mass mailings, merchandise sales, and other events
22 and activities. Mr. Cash contends that this figure includes \$1,800 that he loaned
23 to the Committee.

A handwritten signature in black ink, appearing to be "JC" or similar, is written over the line numbers 21, 22, and 23.

1 12. The Committee and Mr. Cash solicited contributions under the Committee name
2 Californians for Obama in a manner which Respondents acknowledge may have
3 led some contributors to believe that they were making contributions to Obama
4 for America, Barack Obama's Presidential campaign committee. The Committee
5 and Mr. Cash also made representations to vendors that had been contracted to
6 provide telemarketing and printing services for the Committee that led some of
7 the vendors to believe that they were working for the Obama campaign.

8 13. Mr. Cash contends that he intended to raise contributions for the Committee in
9 order to help get the word out regarding the presidential campaign of Barack
10 Obama in its early stages, not for his own personal gain.

11 Mr. Cash contends that he was not aware of the provisions of the Act, and Kinde
12 Durkee and Associates did not advise him of the Act's provisions regarding
13 choosing a name for a committee and soliciting contributions. Mr. Cash also
14 contends that he never intended to violate the law.

15 V. Respondents will not contest the Commission's findings that they violated 2 U.S.C.
16 §§ 432(e)(4), 441d(a), and 441h(b). Respondents will cease and desist from violating
17 2 U.S.C. §§ 432(e)(4), 441d(h), and 441h(b).

18 VI. In ordinary circumstances, the Commission would seek a civil penalty based on the
19 violations outlined in this agreement. However, the Commission is taking into account
20 the fact that the Committee has disclosed debts and obligations totaling \$10,804.73 and
21 has only \$29.41 in cash on hand, and that Respondent Emmett Cash, III, through the
22 submission of financial documentation to the Commission, has demonstrated financial
23 hardship that prevents him from paying a civil penalty in this matter. Accordingly, the
24 Commission agrees that no civil penalty will be due. If evidence is uncovered indicating

1 Respondents' financial condition is not as stated, a total civil penalty of up to Six
2 Thousand Five Hundred Dollars (\$6,500) shall be immediately due, pursuant to 2 U.S.C.
3 § 437g(a)(5)(A).

4 VII. The Committee has ceased operations and has represented that it intends to file a
5 termination report with the Commission.

6 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C § 437g(a)(1)
7 concerning the matters at issue herein or on its own motion, may review compliance with
8 this agreement. If the Commission believes that this agreement or any requirement
9 thereof has been violated, it may institute a civil action for relief in the United States
10 District Court for the District of Columbia.

11 IX. This agreement shall become effective as of the date that all parties hereto have executed
12 same and the Commission has approved the entire agreement.

13 X. Respondents shall have no more than 30 days from the date this agreement becomes
14 effective to comply with and implement the requirements contained in this agreement and
15 to so notify the Commission.

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XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Anthony Herman
General Counsel


BY:


Kathleen M. Guith
Acting Associate General Counsel
for Enforcement

Date

2-17-12

FOR THE RESPONDENTS:


Emmett Cash, III

Date

Nov 22, 2011